

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

November 16, 2005

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

SPARTAN MINING COMPANY

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Docket Nos. WEVA 2002-111-R  
WEVA 2002-112-R

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

## ORDER

### BY THE COMMISSION:

This contest proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act” or “Act”). The Department of Labor’s Mine Safety and Health Administration issued a citation against Cannelton Industries, Inc. (“Cannelton”)<sup>1</sup> alleging a significant and substantial (“S&S”) violation of 30 C.F.R. § 75.360(a)(1), requiring preshift examinations. Administrative Law Judge T. Todd Hodgdon vacated the citation at issue on the grounds that the operator did not violate the preshift requirement set forth in section 75.360(a)(1) because of the “pumpers’ exception” contained in 30 C.F.R. § 75.360(a)(2). The Commission affirmed the judge’s dismissal. *Cannelton Industries, Inc.*, 26 FMSHRC 146 (Mar. 2004).

In *Sec’y of Labor v. Spartan Mining Co.*, 415 F.3d 82 (D.C. Cir. 2005), the District of Columbia Circuit Court of Appeals vacated the Commission’s decision. The court determined that the pumpers’ exception only applies in “areas where pumpers are scheduled to work or travel” and that the preshift requirement remains applicable in areas where the pumpers do not travel, such as where there are energized trolley wires. 415 F.3d at 85 (citing 30 C.F.R. § 75.360(a)(2) & (b)(7)). On September 19, 2005, the court issued its mandate in this matter, returning the case to the Commission’s jurisdiction.

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<sup>1</sup> During the pendency of this appeal, the assets of Cannelton were purchased by the parent company of Spartan Mining Company. Spartan was substituted as the party in interest by court order. *Sec’y of Labor v. Spartan Mining Co.*, 415 F.3d 82, 84 (D.C. Cir. 2005).

Accordingly, consistent with the instructions of the D.C. Circuit, we hereby remand to the judge for further proceedings on the issue of violation, an evaluation of the S&S nature of the violation, if appropriate, and an assessment of any civil penalty.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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